

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 14 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ASMA SALIM,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 05-72419

Agency No. A77-810-944

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 9, 2007***
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: HALL and BYBEE, Circuit Judges, and ZAPATA****, District Judge.

Asma Salim, a native and citizen of Bangladesh, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming the Immigration Judge's ("IJ") denial of her application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction pursuant to 8 U.S.C. § 1252.

Several ambiguities in the IJ's opinion preclude proper review of this case. The IJ's use of the term "severe" in holding that Salim failed to establish past persecution, and his citation to a case that applies the standard for humanitarian asylum, render it impossible to determine whether he applied the correct legal standard in considering Salim's claim of past persecution. Further, the IJ failed to recognize that a past persecution finding affected the burden analysis for well-founded fear of future persecution and changed country conditions. Neither did he properly describe changed country conditions as an independent factor justifying denial of asylum.

Thus, we cannot conduct a proper review of this case. We remand to the BIA for clarification. *Recinos de Leon v. Gonzales*, 400 F.3d 1185, 1189 (9th Cir. 2004). On remand, the BIA must take Salim's testimony as true, because the IJ

**** The Honorable Frank R. Zapata, United States District Judge for the District of Arizona, sitting by designation.

failed to make an explicit adverse credibility finding. *See Kalubi v. Ashcroft*, 364 F.3d 1134, 1141-42 (9th Cir. 2004). If further factual determinations are necessary, the BIA must remand to the IJ under 8 C.F.R. § 1003.1(d)(3)(iv). *Recinos*, 400 F.3d at 1194.

REMANDED.